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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICIO JAVIER SORIANO-
MORENO,

Defendant and Appellant.

G056708

(Super. Ct. No. 17NF0662)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Judge. Affirmed.

Jason L. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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We appointed counsel to represent defendant Mauricio Javier Soriano-Moreno on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel provided one possible issue to assist this court in its review: "Does the '10 years of age or younger' requirement in [Penal Code] section 288.7 encompass crimes which occur when the victim is over the age of 10 but under the age of 11?" (All further undesignated statutory references are to the Penal Code.)

Defendant was born in July 1998. L. was born in October 2006. She was 11 years old when she testified on June 21, 2018. At the time she testified, she had just finished the sixth grade and was going to begin the seventh grade in the fall of 2018. She and her parents share a bedroom, although she has her own bed. Defendant, her step-brother, L. and her parents lived in the same residence.

When the prosecutor began questioning L. about the incident, the following question was asked and answered:

"Q. And was there a night in September when something happened with [defendant] that shouldn't have happened?

"A. Yes."

L. went on to describe how she woke up to see defendant in her bedroom and her underwear and pajama pants were pulled down. Defendant's mouth was on her "private part." She pulled her pajamas up, and defendant asked her to touch his private part, but she declined. He then pulled her hand and tried to make her touch his private part, but she pulled her hand away and ran into the living room where her father was. On cross-examination, defendant's counsel asked no questions about the date of the incident.

At trial, a sexual assault detective with the Anaheim Police Department testified. The detective said the incident was first reported to police on March 9, 2017. The detective brought a video and a transcript of L.'s March 15, 2017 interview with the

Child Abuse Services Team to court. Copies of the transcripts were passed out to the jurors, and the video was played in open court. The transcript reflects the following questions and answers:

“Q. When did that happen?

“A. Like in September, I can’t remember well. [¶] . . . [¶]

“Q. Well how old were you?

“A. About nine or ten I don’t remember.

“Q. Nine or ten years old? In what . . . grade were you?

“A. In fifth.

“Q. In fifth grade still, okay. Tell me everything that happened.”

The detective also explained that L.’s mother engaged in a pretext phone call to defendant on March 9, 2017. The following questions were asked by the mother and answered by defendant in that call:

“Q. Hmm, I was calling you about the incident that happened in September.

“A. Uh-huh.

“Q. Uh, I have problems because of that and it is hmm, because of the problem that happened with [L.] and [M.].

“A. Uh-huh.

“Q. Then it is hmm, do you remember everything that happened?

“A. Truly no, I don’t remember anything. [¶] . . . [¶]

“Q. Uh-huh (PAUSE) well now I want you to promise me that you will never disrespect nor touch her again.

“A. No, well of course, I mean, I know it was a great mistake that I made.”

The detective also told the jury defendant was questioned, and the interview was recorded. Transcripts of the interview were provided to the jury. The following

questions were asked by the detective and answered by defendant during that March 10, 2017 interview:

“Q. Do you know . . . when it was, what incident I’m talking about?”

“A. Well, I don’t remember too well about that.

“Q. In September or November of . . . last year?

“A. Mmm, ***^[1] so around there in September ***. [¶] . . . [¶]

“Q. . . . So in September ’16, you went to sleep, in 2016, *** talking about that incident that happened

“A. Uh-huh.

“Q. . . . With your little sister. . . .”

In cross-examining the detective, the following questions were asked by defendant’s counsel and answered by the detective:

“Q. And so, it was so much later – how did you determine the date, roughly?

“A. The patrol officer, Officer Hornack, advised her^[2] that the victim had disclosed to him and his partner it was sometime in September of the year before, which was 2016.

“Q. And you weren’t able to fix a specific reason why she remembered September?

“A. No, the victim didn’t specify why. She just said it was September of last year.

“Q. Okay. Did you ever take any photographs of the room?

“A. No, I did not.”

¹ The transcript states that *** denotes unintelligible conversation.

² Although it is not clear, it appears that “her” refers to L.’s mother.

Section 288.7 reads: “(a) Any person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 25 years to life. [¶] (b) Any person 18 years of age or older who engages in oral copulation or sexual penetration, as defined in Section 289 with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 15 years to life.”

From reading the entire record, we see that the date of the occurrence is not clear. What is clear, however, is that L. was in the fifth grade when the incident happened. Not only did L. clearly state she was in the fifth grade when the incident occurred, but the record also reflects that in the fall of 2016, she was supposed to begin the seventh grade, so in September 2016, she was in the fifth grade. L. reached the age of 10 in October 2016. Police became involved in March 2017, when L. was still 10 years old.

“We conclude that the interpretation of the statutory phrase ‘10 years of age or younger’ includes children younger than 10 years of age and children who have reached their 10th birthday but who have not yet reached their 11th birthday. That is, ‘10 years of age or younger’ as expressed by the Legislature in Penal Code section 288.7 is another means of saying ‘under 11 years of age.’” (*People v. Cornett* (2012) 53 Cal.4th 1261, 1263.) Thus, it is clear L. was “10 years of age or younger” at the time the incident occurred.

We have examined the record and found no other arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in defendant’s own behalf. That period has passed, and we have received no communication from defendant.

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.